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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,863	07/14/2000	KEITH DOUGLAS PERRING	LP4285	2545

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EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/509,863

Applicant(s)

PERRING ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment A has been filed on September 17, 2002 as Paper No. 7. Claims 1 and 8 have been amended. The amendment is sufficient to overcome the 35 USC 112 rejection to the "unworn fabric" limitation set forth in section 3 of the last Office Action.

Claim Rejections - 35 USC § 112

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-11 are indefinite because claims merely setting forth physical characteristics desired in an article and not setting forth specific compositions, which would meet such characteristics are invalid as vague and indefinite because they cover any conceivable combination of ingredients, either presently existing or which might be discovered in the future. Claims 1-11 would impart desired characteristics too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition and, in effect, recites compounds by what it is desired that they do rather than what they are. *Ex parte Slob*, (PO BdApp) 157 USPQ

172. In this case, the desired characteristics include octanol/water partition coefficient values and gas chromatographic Kovats index values.

Claim Rejections - 35 USC § 103

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono et al. (U.S. Patent No. 4,882,220) in view of Brekkestran et al. (U.S. Patent No. 5,008,517).

Ono et al. provide fibrous structures to which microcapsules encapsulating a perfume are adhered in an amount of 0.3 to 7.0% based on the weight of the fibrous structure (column 2, lines 42-53). Ono et al. disclose using geraniol and nerolidol as two possible fragrances for use in depositing onto the fabric (column 6, lines 17-31), which qualify as Category A' fragrances according to the Applicant's disclosure, thus meeting the octanol/water partition coefficient and Kovats index values. Ono et al. also teach the fragrances make up 5 to 99% by weight of the microcapsule. Ono et al. disclose several different fiber types that can be used in making the fabric, including various nylons and polyesters (column 4, lines 44-63), and also teaches applying the fragrance to stretch fabrics (column 26, line 7). However, Ono et al. fail to teach incorporating spandex fibers into the fabric material for fragrance coating. Brekkestran et al. teach incorporating spandex fibers into fabric material produces a fabric with stretchable and elastic qualities. It would have been obvious to one skilled in the art to incorporate spandex fibers into the fabric provided by Ono et al. in order to provide a fabric with improved elasticity. With regard to claim 2, it would have been obvious to

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one skilled in the art to have the weight percent of spandex fibers incorporated into the fabric be between 0.5 and 50% in order to produce a fabric with the desired degree of elasticity, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to claims 3, 10, and 11, the fragrance material would inherently be incorporated onto the spandex fiber in the fabric taught by Ono et al. in view of Brekkestran et al. With regard to claim 7, Ono et al. disclose the perfume is preferably applied to the fabric in the finishing step (column 8, lines 52-58).

Response to Arguments

5. Applicant's arguments filed in Paper No. 7 have been fully considered but they are not persuasive.

6. Applicant argues that octanol/water partition coefficients and Kovats indices are not functions, but are merely properties, which further define the categories of fragrance materials in the recited claims. The Examiner agrees. The basis for *Ex parte Slob* 112 rejections is "claims merely setting forth physical characteristics desired in an article and not setting forth specific compositions". A claim is indefinite when it merely sets forth desired properties (physical characteristics) of the composition rather than the composition itself. This is because it purports to cover any composition that would meet the desired properties or any future compositions which may be created that would meet the desired properties. Applicant states the claimed properties would be analogous to melting points or boiling points. The Examiner notes that the issue found

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indefinite in *Ex parte Slob* was "a liquefiable substance having a liquefaction temperature from about 40 degrees C to about 300 degrees C." Therefore, if Applicant's properties are indeed analogous to properties of melting point and boiling point, then the claims are correctly rejected under 35 USC 112.

7. Applicant argues that the Examiner maintains that one would have been motivated to combine the fragrance application teachings of Ono with Brekkestran. However, the combination of references was based on the motivation of improving the elasticity of the fabric of Ono by including spandex fibers, as taught by Brekkestran, and not applying Ono's fragrance teachings to the Brekkestran reference.

8. Applicant argues that Examiner has not provided any reason to combine the references outside Applicant's disclosure. However, the motivation is based on improving the elasticity of Ono's fabric by incorporating spandex fibers. This combination is proper because Ono establishes applying the fragrance to stretch fabrics.

9. Applicant argues that the present invention does not require the fragrance to be microencapsulated. However, Applicant's fragrance composition does not preclude the practice of microencapsulating the fragrance.

10. Applicant argues that Ono teaches away from the direct application of fragrance to the textile. However, the microcapsules that hold the fragrance are themselves a fragrance composition and they are directly applied to the fiber. Applicants claims recite the fragrance composition is deposited onto the fiber, but does not preclude

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microcapsules. Also, microcapsules themselves would be one component of the fragrance composition of Ono.

11. Applicant argues Brekkestran is not concerned with making fragranced fabrics. The Examiner agrees. The Brekkestran reference was used solely to show that spandex fibers are used in fabrics to make them elastic.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771

November 4, 2002



ELIZABETH M. COLE
PRIMARY EXAMINER